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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

ADREE EDMO (a/k/a MASON EDMO),  
  
Plaintiff,

v.

IDAHO DEPARTMENT OF  
CORRECTION; HENRY ATENCIO, in his  
official capacity; JEFF ZMUDA, in his  
official capacity; HOWARD KEITH  
YORDY, in his official and individual  
capacities; CORIZON, INC.; SCOTT  
ELIASON; MURRAY YOUNG; RICHARD  
CRAIG; RONA SIEGERT; CATHERINE  
WHINNERY; and DOES 1-15;

Defendants.

Case No.: 1:17-cv-00151-BLW

**PLAINTIFF'S OPPOSITION TO DEFENDANTS'  
MOTION TO SEAL**

Complaint Filed: April 6, 2017  
Discovery Cut-Off: None Set  
Motion Cut-Off: None Set  
Trial Date: None Set

Immediately prior to Plaintiff's filing of this Opposition, Corizon Defendants ("Corizon") publicly filed the document they have requested the Court to seal.<sup>1</sup> ECF No. 119-4. As a result, Corizon Defendants have waived any argument that the document should be sealed and rendered their Motion to Seal moot. Should the Court nonetheless consider Defendants' Motion, however, Plaintiff's position is articulated below.

### INTRODUCTION AND FACTUAL BACKGROUND

During discovery, Corizon produced a two-paged document entitled "Corizon Health Clinical Pathway: Gender Dysphoria" ("the document"). Corizon designated the document "confidential" pursuant to the Protective Order entered in this case, asserting it contained "proprietary/trade secret information." ECF Nos. 94, 95. Plaintiff filed the document (under seal, given Defendants' assertion of confidentiality) as an exhibit to her Reply in Support of Plaintiff's Motion for Preliminary Injunction, ECF No. 113, and it will be used as an exhibit during the upcoming preliminary injunction hearing. The parties met and conferred, and Corizon continues to maintain that the document contains proprietary trade secret information and should be sealed at the evidentiary hearing. Plaintiff's position is that this document does not meet the heavy burden for sealing a document used as evidence in a public federal court proceeding, and submits this brief pursuant to this Court's Order, ECF No. 110.

### ARGUMENT

#### I. The "Compelling Reasons" Standard Governs Defendants' Motion to Seal

The Ninth Circuit has long recognized "a strong presumption in favor of access to court records." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). This presumption is "based on the need for federal courts . . . to have a measure of accountability and for the public to have confidence in the administration of justice." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (citations omitted), *cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016). A party seeking to seal a

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<sup>1</sup> Because Corizon filed the document publicly and described it in their publicly-filed brief, Plaintiff also does not file her Opposition under seal pursuant to Local Rule 5.3.

judicial record bears the heavy burden of overcoming this strong presumption by showing that “compelling reasons supported by specific factual findings . . . outweigh the general history of access and the public policies favoring disclosure.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (citations and internal quotation marks omitted). The compelling reasons standard applies to any document attached to a motion that “more than tangentially related to the merits of a case,” regardless of whether that document was previously designated as confidential pursuant to a protective order during discovery. *See Ctr. for Auto Safety*, 809 F.3d at 1096, 1101-02.

In *Center for Auto Safety*, the Ninth Circuit specifically held that the compelling reasons standard applied to documents designated confidential during discovery and filed in support of a motion for preliminary injunction. 809 F.3d at 1102; *see id.* at 1100-02 (motion for preliminary injunction “more than tangentially related to the merits” of the case because the injunctive relief would resolve a portion of the underlying claims if granted). Here, the document at issue was designated confidential in discovery, was filed by Plaintiff in support of her reply, and has been designated by both Plaintiff and Corizon as an exhibit for the preliminary injunction hearing. Thus, Corizon must meet the heightened compelling reasons standard. *See Ctr. for Auto Safety*, 809 F.3d at 1102.

In general, compelling reasons to seal a document exist when court records might become a vehicle for improper purposes, such as to “gratify private spite or promote public scandal,” to circulate “libelous” statements, or “as sources of business information that might harm a litigant’s competitive standing.” *Id.* at 1097 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 599 (1978)). While the decision to grant or deny a motion to seal is within the court’s discretion, the court must clearly articulate its reasoning in deciding a motion to seal. *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 679 (9th Cir. 2010). The court must take all relevant factors into consideration and then “base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture.” *Foltz*, 331 F.3d at 1135 (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). Finally, even if a party

does show a compelling reason to seal certain documents, the sealing itself must be narrowly tailored to serve that justification. *See, e.g., Press-Enter. Co. v. Sup. Ct. of Cal., Riverside Cnty.*, 464 U.S. 501, 509-11 (1984).

## **II. No Compelling Reasons Exist to Seal the Document Because It Is Not a Trade Secret**

No compelling reasons outweigh the public policy favoring disclosure of the document. First, Corizon’s assertion that the document should be sealed because it constitutes a proprietary “trade secret” is meritless. The document does not constitute a trade secret because the information it contains is not proprietary. As the Supreme Court has explained, a document contains a trade secret for public access purposes where it could be used as a “source[] of business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 598–99; *see also Ctr. for Auto Safety*, 809 F.3d at 1097. A necessary feature of a trade secret is that it “must be secret, and must not be of public knowledge or of a general knowledge in the trade or business.” *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 476 (1974); *see also Serenic Software, Inc. v. Protean Techs., Inc.*, No. CV04-415-S-LMB, 2007 WL 1366547, at \*3 (D. Idaho Apr. 26, 2007) (noting that under the Idaho Trade Secrets Act, a trade secret must derive “independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use”); *see, e.g., W.L. Gore & Assocs., Inc. v. GI Dynamics, Inc.*, 872 F. Supp. 2d 883, 899 (D. Ariz. 2012) (holding that information regarding the best bodily location to insert medical device was not trade secret because it was publicly disclosed in patent application).

Each section of Corizon’s document merely repurposes commonly known medical information regarding the clinical treatment of gender dysphoria. For example, the “Definition” section is a direct quotation from the definition of gender dysphoria in the American Psychiatric Association’s *Diagnostic & Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition* (2013). The “Risk Factors” section is copied from the Federal Bureau of Prisons’ Clinical Guidance on the Medical Management of Transgender Inmates (December 2016) (“FBP Guidance”), Appendices

2 & 3, <https://www.quantumunitsed.com/get-material.php?id=677>. The “Diagnostics/Labs” section recommends similar labs to the FPB Guidance’s Treatment Summary Charts for MtF and FtM Therapy, but with much less detail than the FPB document. FPB Guidance 22-25. The “Medical Management/Treatment” section lists dosages commensurate with those recommended by the FPB Guidance Charts. *Id.* The “Potential Complications” section closely tracks the World Professional Association of Transgender Health’s *Standards of Care, 7th Version*, Appendix B: Overview of Medical Risks of Hormone Therapy, [https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7\\_English.pdf](https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf). Finally, the “Follow Up” section presents very similar recommendations to those provided in the Endocrine Society’s Clinical Practice Guideline for the Endocrine Treatment of Gender Dysphoric/Gender-Incongruent Persons (November 2017), Table 15: Monitoring of Transgender Persons on Gender-Affirming Hormone Therapy: Transgender Female, <https://academic.oup.com/jcem/article/102/11/3869/4157558>, as well the FPB Guidance Charts, FPB Guidance 22-25.

In sum, the information in every section of the document is drawn from already published and publicly available clinical standards and guidelines, and therefore cannot constitute a trade secret. Nor did Corizon identify with specificity any part of the document that is purportedly proprietary, which it must do if any portion of the document is to be sealed. *See, e.g., Press-Enter. Co.*, 464 U.S. at 509-11. Corizon thus did not satisfy the “compelling reasons” standard and the document should not be sealed.

### **III. The Document Governs Treatment of Persons by a Governmental Entity, and Therefore Is a Public Document Over Which Confidentiality May Not Properly Be Asserted**

Moreover, IDOC, a governmental entity, contracts with Corizon to provide treatment to persons in IDOC’s custody. Any policy document that governs the medical treatment provided to individuals in a State prison is information in the public interest, and information that is subject to Idaho’s public records law. Although IDOC did not produce this document in response



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 5th day of October, 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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